IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8818 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AHMEDABAD EDUCATION TRUST - Petitioner(s)
Versus
DISTRICT EDUCATION OFFICER & 1 - Respondent(s)

==========

Appearance :
MR MP PRAJAPATI for Petitioner(s) : 1,
MS MANISHA LAVKUMAR, AGP for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/11/2006

ORAL JUDGMENT

The petitioner trust runs a higher secondary school at Surat. To fill up one vacancy of senior clerk, the petitioner approached the respondents

seeking NOC. Such NOC was granted by order dated 21.4.95. The condition for filling up the said vacancy was that the candidate must have qualification of SSC and that the candidate should belong to ST category since the vacancy was ST backlog vacancy.

2. Pursuant to the said NOC, the petitioner gave an advertisement inviting eligible candidates to apply. The date of interview was also communicated to the District Education Officer. Interview was conducted on 14.5.95. DEO, however, did not remain present. The petitioner prepared a list of two successful candidates. First was one Linaben Patel stated to be a ST candidate. Another was one Vithalbhai Hirani who is stated to be a handicapped candidate belonging to general category.

3. By order dated 14.5.95, said Smt.Linaben was offered appointment as Senior Clerk. By communication dated 26.5.95, however, she declined to accept such appointment since she had secured appointment at a place near to her residence. The

petitioner therefore appointed said Shri Vithalbhai Hirani as senior clerk by an order dated 10.6.95. Simultaneously, by a separate communication also dated 10.6.95, the petitioner approached the DEO for granting approval to the appointment of Senior Clerk. It is the case of the petitioner that the request of the petitioner was not considered and not even replied to. The petitioner, therefore, filed this petition.

4. In the affidavit in reply filed on behalf of respondents, it is stated that though Linaben Patel belongs to ST category since she did not accept the appointment, Vithalbhai Hirani came to be appointed who belongs to general category. It is primarily on this ground that approval is withheld. It is stated that the vacancy was ear-marked for Scheduled Tribe candidate and could not have been filled in from any other category. It is also stated that as per the Government circulars, there was no possibility of preparing a waiting list.

5. Having heard the learned advocates appearing

for the parties and having perused the material on recored, I find that the prayer of the petitioner for granting approval to the appointment in question cannot be accepted. It is not in dispute that the NOC was granted with a clear specification that the vacancy will be filled up from ST candidates. It was thereafter not open for the petitioner to unilaterally convert such a vacancy and fill up the same through general category candidate on the ground that ST candidate was not available. Nothing has been produced on record to suggest that there were no other ST candidates who had participated in the interview. Even otherwise, without proper permission, ST category vacancy could not have been utilized for non-ST candidate. In this view of the matter, approval was rightly not granted.

6. It is stated that said Shri Hirani is discharging his duties as senior clerk since his appointment and the petitioner is bearing the burden of his salary. If the petitioner undertakes to the Government to maintain the ratio meant for ST

candidates and approaches the Government for prospective approval of appointment of Shri Hirani, the same shall be considered in accordance with rules.

7. Subject to the above observations, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)